

ASEAN LEGAL SYSTEM: A CHALLENGE OF CUTTING OUT CULTURAL BOUNDARIES

(The Case of Labour and Social Security in ASEAN)¹

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The recent result of ideology conflict between capitalism and socialism/communism, has established capitalism as dominant paradigm in the world. Globalization, a new terminology come up from this dominant ideology, has brought the world fully controlled by market mechanism. It means that capitals, either material, goods, cultural or labour force, will move from one to other regions based on the similar ideology to develop market expansions. Thus, it is reasonable to have thorough study on industrial development in the developing countries such as Southeast Asia to find common problems in the regional site. Furthermore, it is necessary to invite scholars to rethinking about values in order to understand legal system in integrating regions

One of the important issues should be related to the labour or industrial relations not only on single region in ASEAN members, but also ASEAN as integrated nations. On this aspect, each country has different experience in the implementation of industrial relations, either how firm manages labour or its legal framework. For instance, although almost Asean countries perform industrial relations based on harmony, the derivation of this value on the legal framework in each country are different. In the early 1990th, I found the fact that ASEAN countries such as Singapore,

¹It is delivered in the International Law Conference, AEI University of Malaya on titled: *ASEAN Legal System and Regional Integration*, September 3-4, 2001

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Malaysia, Thailand and The Philippine allowed labour protest and strikes but Indonesia did not allow it and bent those activities because it can disturb political stability³. During the President Soeharto period, industrial relations had strongly controlled by this regime. In the recent time, despite of the labour constitution have been reformed, its result does not satisfy the labour organizations because the new constitution does not protect the labour right and insure them in industrial relations.

Issues on labour migration, growth and productivity, protection and security are not solely the problem of economic related to industrial development in each country, but cultural problems also become important issues needed to be discussed for creating consensus to ASEAN legal system. Work performance, how firm manages labour could not be separated by local culture. Surely, the local culture is not the only aspect determining the labour security, however, this aspect necessarily come into consider in any analysis on industrial relations. Furthermore, regional integration will be exist, not only by coercive control legal system, but also values that could be respected for ASEAN communities. The problem is which and what values chosen by members of ASEAN communities and how those can be transformed within legal framework?

Before composing ASEAN legal aspect related to labour relations as mentioned above, it is necessary to do thorough research on the legal framework and its implementation in each member of ASEAN countries. I argue that this aspect is needed as early process of the policy improvement, to rethink ASEAN not only loose cohesion, but also to create ASEAN values to maintain the whole region in harmony. In this context, the distinctive local culture in each region could be tolerated and the consensus of common values will be achieved.

³I learned from Basu Sharma on his writing in "*Aspects of Industrial Relations in ASEAN (1985)*" and compared to Indonesian case at that time. The distinctive of understanding harmony is demonstrated on my dissertation in "*Cultural Values, Organization and Work Performance of Industrial Workers in Indonesia*" a dissertation, not publish in English version.

World System and The Position of ASEAN

The historical background of ASEAN members were dominated by colonial countries -except for Thailand- where the colonialism in each ASEAN countries was difference. Countries such as Indonesia was controlled by the Netherlands, Malaysia by England and The Philippine by United State etc. Colonial legal framework has greatly influenced to each member of ASEAN countries after they became Independent Nations. Although each new country has constitutions, legal system and its framework, those could not be separated from its experience in the colonial period. Beside the state have adopted colonial legal system, cultural values and religion also give contribution in constructing the implementation of legal aspect, which are different among countries.

During the development process of industrilization, according to Marxist perspective, developing countries like ASEAN become periphery of the developed countries in which exploitation process takes place from core to periphery. In the contrary perspective, Wallerstain argues that those relation have reflected on an international division of labour where each country is drawn by global exchange relations that, either core or periphery, can find great profits. I will leave this theoretical debate, however capitalism develops to become the dominant paradigm in the world. In its development of capitalism, market competition in the capitalist system is not only based on the competition among the state, but also "zone" in which cooperation countries within zone are needed.

The shifting of capitalist development encourages the establishment of new order not only in term of diplomatic relation among ASEAN members but also in all aspect of regulation including labour relations based on legal system. The position of ASEAN as new developing industrial countries are promoted by an available cheap labour to reach comparative advantages. However the labour security should not be ignored. ASEAN mode of production has to insure social and economical security, which can be reflected on the social life. However, labour is industrial power in which their rights must be protected in industrial process. Cooperation with developed countries in term of capital investment should not avoid insuring better life and uncertainty.

Population Growth, Labour Migration and Productivity

Among members of ASEAN countries, Indonesia has very dense population –the largest among those countries- with lower employment creation as compared with other countries. During economic hardship which bring about the crisis, the quality of life is decreasing and unemployment is increasing⁴. It is no longer happened in other ASEAN countries, although they also faced the similar problem. The success of Indonesian government program on family planning can not stop the increasing of population growth. This is the main problem of employment to get work and improve a better condition.

The employment opportunity in other countries has encouraged labour migration from Indonesia. Although the phenomena of labour migration also appear in all countries, it has special meaning for Indonesia to reduce number of unemployment. A largest number of labour migrations from Indonesia are characterized by female workers (80%) with destination countries such as Singapore, Malaysia, Arab Saudi, Hongkong, Taiwan, Brunei and others. Despite of the Indonesia Department of Manpower have noted that Indonesian workers are absorbed in 52 countries, those countries mentioned above is larger than others to absorb them⁵. They usually find jobs as housemaids with contractual work conducted by private agents of employment services that develop a network with the same agents in host countries. Labour often faces, either internal or external problem. It means that the internal problem refer to the relation between workers and its services agent and the agent with Manpower of government office such as fee payment, training and other.

It is interesting to study on why is female larger than male migrant. A study of the research institute of the Padjadjaran University shows that female workers are more expensive than male. Before recruiting workers, employer in host countries has to pay \$ 1.300/ female and \$ 850/male for the agent of employment services in the origin countries. A study in

⁴ILO notes unemployment estimation in 1998 more or less 6.5%. Other estimation notes that Indonesian unemployment is 8%, while the poor increase more then 40 %.

⁵See Research Institute of Padjadjaran University, *Upaya Meningkatkan dan Melindungi Kesehatan Reproduksi TKIW*, Galang Press 1999, p. 30

Purwodadi District, Primawati (2000) notes that reasons of getting work on aboard for female is based on family economic hardship, find capital for creating economic activities and employment hardship in the village level. This is the reason why employment service agent prefer to supply female more then male worker. The problem most oftenly faced by female workers (migrants) is act of violation from her boss. Up to now there is no thorough study related to labour migration and their problems, both in countries itself and at the work place on aboard.

The similar study conducted by Primawati as mentioned above⁶ has shown the fact that the females migrants in general are having low degree of formal education. Before going abroad, some of them were unemployed, peasants, petty traders, housemaids and factory workers.

Formal Education of Migrant workers in Purwodadi District, Central Java Province, Based on Occupation before Leaving Indonesia

Occupational Status Before Leaving Indonesia as Migrant Workers	Elementary School (%)	Secondary School (%)	High School (%)	T o t a l (%)
Unemployed	44.7	50.0	50.0	48.5
Peasants	10.4	15.8	10.0	12.4
Petty Traders	10.4	0.0	10.0	6.2
Housemaids	24.1	7.9	0.0	10.3
Factory Workers	10.4	26.3	30.0	22.6
	100.0	100.0	100.0	100.0

Primawati's primary data 1999 with 97 samples.

It seems there is no bilateral agreement between host and origin countries to regulate the problem of labour migration. Besides, the Indonesian Labour Constitution NO 25 1997 does not regulate labour

⁶ Anggraini Primawati, *Proses dan Dampak Mobilitas Internasional Pekerja Perempuan di Kecamatan Purwodadi, Purworejo, Propinsi Jawa Tengah*, Masters thesis, unpublish, 2000.

migration and labour relation between the agent of employment services and the pattern of recruited workers. Regarding with labour relations, it seems that Indonesian government still has to work hard to create labour security.

Despotic of Labour Regime and Vulnerability

There is no such thing like peace in industrial relation. This kind of situation seems to be the characteristic of early industrial development everywhere in the world, including in Europe. In their region at that time, labour relations were marked by low wages, long duration of work, low labour security, etc. These phenomena reveal in new industrial developing countries to pursuit capital accumulation. Although in some countries have shifted for local labour, migrant workers from poor countries site find low social security and uncertainty. I quote Aihwa Ong (1991) mentioned that connect to gender and labour politics.

Free Trade Zone (FTZ) jobs have generated out-migration of rural women throughout Asia, low wages, vulnerability to layoff have driven many to moonlight as prostitutes in China, Malaysia, Thailand, the Philippines, and Sri Lanka. This overall rise in demands for female labor from poor countries is linked to increasing demands in richer countries for consumer goods and services. For instance, Filipino women have been imported as maids into Hongkong and other Southeast Asian countries where local young women have flocked into factories. Female migrant from Thailand and Sri Lanka have also sought employment as maids and sex workers in places like the Gulf Emirates, Japan, and West Germany (p. 285). Furthermore, Aihwa Ong stated that in the developing countries labour control is "despotic", involving physical violence and often-direct state intervention. Burawoy (quoted by Ong) argues that the brutal form of domination are found in despotic labour regime in some Asian Countries, the case does not prevail in Industrialized Countries.

Indonesian migrant workers in some countries have also experienced the physical violence. Beside above experience, migrant female workers also often face with sexual harassment. As an example, female workers who worked in Arab Saudi often face this difficulties. Mrs. Emun from

Indonesia (not the real name) to mention some, she had worked in Arab Saudi for sixteen month. She had to leave Arab Saudi because her boss, male employer had raped her. Her boss often locked up her in the bedroom, when his wife did not stay at home⁷. That is a behaviour based on Arabian culture in which slavery as world view transformed to their ethos in every-day life, when they employ female worker as housemaid. In the habit of violence behaviour they may be felt that housemaid is slave or serve that already used any time. The victims usually do not find better services from the Host State to solve the problem.

The case of housemaids from Philippine are more attractive against employer because they have better formal education than Indonesian female workers are. They speak English fluently in their communication with the others, besides also have enough understanding in Arab Language. The common problems of Philippine female workers are usually related to the human right violation in the work place. Some of those for instance, there is no privacy; no bedroom for them and often getting mental violence. They usually leave the contract if her job is not in accordance with the contractual relations. They have higher productivity than Indonesian female workers do. Cultural values, habit and other ritual based on religion should be considered to create regulation. Migrant female workers also often have experience the various problems related to habitual actions in everyday-life.

The distinctive mode of regulations⁸

Short description of working conditions in three countries such as Hongkong, Singapore and Arab Saudi show that government policy for female worker are difference. Hongkong has complete regulation on this matter such as the procedure to stay in Hongkong as workers, migrant worker rights, to whom workers have to report when they face the problem. It is because this country has long experience as the host countries for migrant workers. Hongkong and Singapore have regulations

⁷The research institute of the Padjadjaran University, loc. cit., p.152.

⁸The research institute of Padjadjaran University, op cit p. 133

which allow the worker using housemaid that based on their income, while Arab Saudi has no specific regulation related to housemaid labour. Hongkong and Arab Saudi have no limitation for foreign worker to stay in those countries. Hongkong government regulation allows foreign workers to stay in this countries after renewal work contractual relations. In Singapore, government regulation has decided four years of foreign labour related to housemaids.

Although Hongkong and Singapore have fix contractual of work related to migrant housemaid labour, both have little bit different to implement regulation. In Hongkong the contract is applied after getting a legitimization from the origin country, while in Singapore such contract have involved the foreign employment services agent. The purpose of such procedure is to solve the conflictual relations between employer and employee in which the agent is functioning as mediating institution. The regulation mentioned above does not appear in Arab Saudi. Hongkong and Singapore have regulation of fix minimum wage, but Arab Saudi ignores this regulation. In the similar way Hongkong and Singapore have also the leisure time regulation, while Arab Saudi has none. This description shows the fact that each country has different regulation, however, the new industrialized countries have performed the policy of labour relations better than developing countries done.

Concluding Remark: Legal Framework

The differences in legal institution of Asean countries as described above are profoundly determined by historical process at the time when the colonial governments ruled those countries. Each colonial government has different legal institution as compared to the others in line with its original countries (i.e. England, Nederland, Spanish, France, etc.). There some of those countries set its legal institution by taking local culture (common law), while the others neglect it (civil law). Thus, the idea about one Asean legal system seems to be problematic : which will be the proper choice between civil law and common law. In this context, it is a challenge to us to get an alternative by constructing the new legal institution within members of ASEAN toward the regional integration. I

believe that each region has similar cultural values that could be chosen in which those values prevail common values such as solidarity, humanity, democratic, equity and prosperity. Those values should be implemented as new perspective in the legal framework within ASEAN countries. Success for transforming those values, however it is depended on the political will of the state to create social security for workers in industrial or labour relations.

Furthermore, it is necessary to encourage the emerging of multi-lateral agreement related to this matter. I believe that ASEAN integration that is developed by consensus values to established legal system makes those countries powerful in developing politics, economy and culture. It should be struggled for realizing ASEAN as "a zone" that can insure the better quality of life.

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